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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**
11

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 LUKE BRUGNARA,

16 Defendant.
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18

Case No. 08-CR-00222 WHA

Case No. 14-CR-00306 VC

**ORDER VACATING
PRELIMINARY HEARING**

Dkt. 262/13

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20 The Court vacates the preliminary probable cause hearing scheduled for June 16 in
21 the revocation proceeding in case number 08-CR-00222 WHA. In *United States v. Diaz-*
22 *Burgos*, 601 F.2d 983, 984-85 (9th Cir. 1979), the Ninth Circuit held that a preliminary
23 hearing was not necessary in a revocation proceeding when the defendant was "already in
24 custody at the time of the revocation proceeding by reason of a second . . . prosecution."

25 In this case, as detailed in the Court's detention orders, defendant Brugnara was
26 charged by criminal complaint on May 28, 2014, with mail fraud. That new charge (now by
27 indictment returned June 5, 2014) is set forth in case number 14-CR-00306 VC.

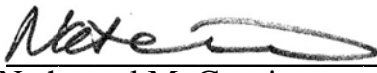
28 In opposition to the government's motion to vacate the preliminary hearing, Brugnara

1 questions whether Magistrate Judge Corley's May 30 detention order applied to both cases
2 or only to the revocation proceeding. Dkt. 250 (WHA) and 7 (VC). That mystery is
3 quickly resolved by review of Judge Corley's order. The order was filed in both cases. The
4 caption lists both cases. The first sentence states that "These related matters came before
5 the Court on May 30, 2014." The first paragraph discusses the charges in both cases. *Id.*

6 Judge Corley ordered Brugnara detained in both cases. As a result, Brugnara
7 concedes that, under Ninth Circuit precedent, he has no right to a preliminary hearing under
8 Rule 32.1. Dkt. 16 at 5. The preliminary hearing is VACATED.

9 IT IS SO ORDERED.

10 Date: June 13, 2014

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Nathanael M. Cousins
United States Magistrate Judge